Promoting Transparency

through the

Electronic Dissemination of Information

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Abstract

The authors argue that, while technologies such as the Internet are ushering in a new era of e-government, governments in Canada have not yet taken full advantage of the opportunities afforded by the technology to actively disseminate information to the public. Rather, most significant e-government initiatives have focused on reaping the benefits of technology as a means of improving the delivery of transaction-based government services. The authors contend that an informed citizenry is an essential element of government transparency, and that the "e-information" component of e-government must receive more attention as a precondition for effective e-governance.

This paper offers three tangible ideas for achieving this goal. First, governments should shift their e-government emphasis away from electronic service delivery models to initiatives focused on *routine disclosure* and *active dissemination* of information through the Internet (e-RD/AD).

Second, governments should implement comprehensive electronic records and document management systems that would not only modernize records management practices, but also make public information more accessible.

Third, the authors sketch an outline of what they refer to as "Access Design Principles" — principles that would imbed the capability to proactively and reactively address information dissemination needs within the design and acquisition of new technology. The chapter concludes with a call for action to governments across the country to increase democratic accountability by improving electronic information dissemination practices.

Introduction

Throughout Canada, governments at all levels are the custodians of vast amounts of information, both current and historical. In Ontario alone, the paper records preserved by the provincial Archivist take up more than 240,000 cubic feet of space.[1] In addition to the Archivist's holdings, all government ministries are required to maintain, by law, their paper records for a specified retention period, until they are eventually submitted to the archives. The size of government, and the primary role that it plays in everyday lives of citizens, makes it potentially the largest single source of information to the public.

The current age has often been characterized as a "knowledge economy" — where information has replaced physical resources as a leading source of wealth.[2] The knowledge economy has been enhanced by advances in information technologies, including the rise of *information communications technologies* (ICTs), which enable the rapid and easy flow of information from one location to another.

ICTs can be characterized as any medium that utilizes telecommunications or technology to transmit information. Examples include television, radio and print media. More recently, the term "ICT" has come to encompass cellular telephones, database applications systems, and multimedia tools. Perhaps the most pervasive ICT — one that has the potential to combine the elements of existing ICTs — is the Internet.

With a traditional economy, one of the key challenges facing governments is the need to continually determine the most efficient and effective allocation of resources. In a knowledge economy, government has an analogous responsibility to account for the effective and efficient dissemination of information to the public.

The need to find more effective means of disseminating information has become more pressing in the "e-government" age. For the purposes of this paper, e-government is being used as a term to describe the use of technology by the public sector in support of public administration. E-government has various sub-components, including: e-governance (which encompasses information sharing and citizen engagement) and e-service delivery (which describes the use of ICTs as transaction-based tools). To date, government's major focus, and its priority, has been on the e-service delivery side of the e-government equation, and the information sharing and governance aspects of e-government have been somewhat neglected.

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[1] This information is made available on the website of the Archivist of Ontario: www.archives.gov.on.ca/english/about/amzfact.htm (date accessed: 17 April 2003).

[2] See for example, the discussion in W.B. Wriston, *The Twilight of Sovereignty* (New York: Charles Scribner's Sons, 1992) at 1-17, for a discussion of how the "information revolution" is shaping the direction of international events.

As has been noted by many proponents of the governance side of e-government, the potential exists to use ICTs to more fully integrate the public in the policy making process.[3] This view is based on the notion that e-governance has the potential of "opening up" the decision-making process of government, and making full-scale public consultation at little expense possible.[4]

While it is true that ICTs offer an unprecedented opportunity in terms of promoting a new model of citizen engagement, citizens must be adequately informed about the mechanics of government before they can fully participate in the political discourse in a meaningful and productive manner. As such, we believe that the very ICTs that have the potential to facilitate democracy through e-governance should first be fully utilized as a means of improving the dissemination of information to the public.

In this paper, we argue that governments are barely scratching the outer layer of the potential that technology offers as a tool for disseminating information to the public, and are therefore failing to open that doors that would allow citizens to fully participate in the "knowledge economy." This paper will discuss a number of tangible ways that this may be done, which will, at the same time, bring about improvements to statutory Freedom of Information (FOI) regimes. The paper makes three main suggestions for improving existing regimes.

In Part I, we argue that the potential exists to more fully utilize ICTs in order to make government information generally available to the public. To date, governments have used the Internet mainly as a means to promote the delivery of government services. While this is a laudable goal, these efforts should be accompanied by an increased awareness of the need to actively disseminate information to the public.

In Part II, we examine a problem that has been an Achilles heel of effective information dissemination — the inadequate management of government records. Where government information is not stored in a manner that makes it easily accessible to both government officials and the public pursuant to FOI requests, the ability to effectively disseminate information is hampered. In this section, we propose the development and implementation of Electronic Records and Document Management Systems (ERDMSs) as a good way of addressing these shortcomings.

In Part III, we suggest the adoption by government of Access Design Principles (ADP). Ideally, these principles would provide a benchmark for all new government systems involving the use of information technology, and would guide the design of any new government projects. Under

[3] One of the leaders in this field is Steven Clift, who operates a website devoted to "e-democracy:" www.publicus.net/new.html (date accessed: 17 April 2003).

[4] Much of the path-breaking work in this area in Canada is being conducted by federal Member of Parliament Reg Alcock, whose group Crossing Boundaries has promoted e-governance through forums and a series of papers available on the project's website: www.crossingboundaries.ca (date accessed: 17 April 2003).

an ADP regime, every government body looking at developing a new technology or modifying an existing one would need to ensure that the project design complies with the ADP process before the procurement cycle can be launched. In this way, the design of any technologies would include the common criteria of public accessibility, and the introduction of new technologies would not act as a barrier to the speedy retrieval and dissemination of information.

We conclude by calling on governments across the country to improve their information dissemination practices.

I. Importance of the Electronic Dissemination of Information

The public has come to appreciate that the Internet is a valuable source of information. Often, people will consult this medium as a way of keeping up to date on current events, to do research on travel destinations, or to make purchasing decisions. Likewise, when individuals are seeking information about a particular government service, the Internet is a logical source. A recent American study found that three in five people turn to the Internet first when searching for government information.[5]

However, while the capability of the Internet as a conduit for disseminating information is enormous, most of the major e-government initiatives to date have focused narrowly on e-service delivery. In this respect, Canada has been credited as somewhat of a world leader in e-government.[6] At both the federal and provincial levels, governments have made the development of mechanisms for improving government service delivery through use of the Internet a priority and have announced ambitious roll-out periods.[7] At the federal level, the government has made an effort to design a computer network that would allow citizens to file income taxes, apply for employment insurance and make use of other government services from a single, central Web-portal.

At the provincial level, there has been a similar focus on government electronic service delivery. The information that is most easily accessible to the public through government websites relates either indirectly or directly to the provision of government services. For example, in Ontario, the main government website offers a new section called "Life Events,"[8] which provides citizens with information pertaining to the various services offered by the Ontario government relating to getting married, giving birth, or dealing with the death of a loved one. Clicking on a particular topic brings the user to the website of the relevant government ministry offering a particular service. There are a variety of other e-government initiatives in Ontario that now allow for the electronic registration of land titles, and the electronic filing of court documents. The passage of the *Electronic Commerce Act, 2000*[9] now legally recognizes transactions taking place using ICTs.

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[5] Survey conducted by the Pew Research Center, 29 December 2002, available online: www.pewinternet.org/reports/toc.asp?Report=80 (date accessed: 17 April 2003).

[6] See T.B. Riley, *Electronic Governance and Electronic Democracy: Living and Working in the Wired* World (London: The Commonwealth Secretariat, 2000) at 23.

[7] Initially, the federal government had announced that it's plan was to become the world's "most connected nation"—offering the most government services online of any nation by the year 2004: see S. Borins, "On the frontiers of electronic governance: a report on the United States and Canada" 68:2 *International Review of Administrative Studies* 68(2) at 201.

[8] The life events section of the Ontario government's website may be accessed at: www.gov.on.ca/MBS/english/myontarioweb/life_events.html (date accessed: 17 April 2003).

[9] S.O. 2000 c. 17.

Generally, governments' focus to date has been on the transactional (or the e-service delivery) side of the e-government coin. While this focus is commendable, and will inevitably bring about positive benefits to governments and citizens alike, it is narrow and ignores what citizens have identified as their primary reason for accessing the Internet — they want information.

Although there is some information made available on government websites for the purpose of information dissemination, with limited exceptions,[10] governments have not been proactive in thoroughly evaluating their record holdings, and in making the appropriate records available in a format that allows for easy accessibility by the public. There has not yet been a significant effort to fully embrace technology as a means to promote the values of transparency and bring to light the widest possible range of information resources.

The narrow focus on the service delivery aspects of e-government is particularly troubling in light of the growing recognition of the opportunities that exist in the area of e-citizen engagement.[11] Existing literature on the topic promotes the view that the Internet may one day be used to facilitate democracy in a number of ways, including online town-hall meetings, online consultations on policy proposals, and providing for electronic referendums. While there is clearly promise in these emerging ideas, unless information is more actively disseminated to the public, citizens will not be able to more fully engage in political discourse in a meaningful and informed manner.

Traditional Paper-based FOI Regimes

The value of FOI and the corresponding need to create a culture of access has been well expressed. In a case dealing with an FOI request under the federal *Access to Information Act*,[12] the Supreme Court of Canada stated:

> The overarching purpose of access to information legislation ... is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.[13]

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[10] The efforts made by Ontario's Ministry of Natural Resources, which is in the process of implementing an innovative records management system, are discussed below in Part III.

[11] Fortunately, the Ontario Government has stated that it plans on making e-citizen engagement a priority. The Government's speech from the Throne on 19 April 2001 stated:

> Government is the servant of the people, not master. Citizens are more than "customers" or "clients"; the entire public sector belongs to them. Citizens are entitled to transparency in the operation of public institutions, including openness about how they spend and reporting of their performance and results.

[12] R.S. 1985, c. A-1.

[13] *Dagg* v. *Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at 432.

The values of transparency and government accountability are promoted through the presence of a healthy and robust statutory FOI regime. Most democratic nations in the world have now recognized the values promoted by FOI, and have enacted legislation codifying rights and obligations that reflect those values. Canada is no exception. We have federal access to information legislation, as well as comparable laws in each of the provinces.[14]

The operation of FOI statutes across the country is similar. Citizens seeking access to a particular record are required to submit a formal request in writing to the government ministry or agency in possession of the record. This request is normally accompanied by the payment of a small fee.

At that point, the appropriate officials are required to search through the institution's record holdings in order to determine whether records that are responsive to the FOI request actually exist. After the pertinent record or records are located, the institution determines whether the information may be disclosed to the requestor, or if it is subject to a statutory exemption.

If the government ministry or agency decides that the records can be disclosed, they are provided to the requestor. On the other hand, if the institution decides to refuse disclosure on the basis of a statutory exemption, the requestor has the right to appeal the decision to an independent body (for example, the Office of the Information and Privacy Commissioner (IPC) in Ontario).

While the use of FOI process throughout Canada has proven to be one effective means of disseminating information to the public for two decades, these statutory schemes are not without their shortcomings. The amount of time it takes to process FOI requests is one of them.

In Ontario, under the *Freedom of Information and Protection of Privacy Act*[15] (*FIPPA*), institutions have 30 days from the time a request is received to respond to an access request.[16] Although this time-frame is clearly and explicitly set out in the statute, institutions often fail to respond to requestors on time.[17] Other jurisdictions face similar problems, often more serious than Ontario's.

In addition, the rigid nature of the FOI process acts as a barrier to access for some individuals who may not wish to attempt to navigate the sometimes murky FOI waters. In some cases, individuals may not posses the sophistication necessary to properly take advantage of their right to access government information. In order to lessen these barriers to access, government institutions need to be proactive in making information available to the public.

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[14] Information compiled by the Office of the Information Commissioner of Canada, on file with authors.

[15] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 [hereinafter *FIPPA*].

[16] Extensions beyond this 30-day time-frame may be granted in limited circumstances: see ibid., ss. 26 and 27.

[17] The IPC makes available yearly statistical data on compliance with statutory time-frames. These statistics demonstrate that some institutions of the government of Ontario are still failing to respond to FOI requests in the time that is required under statute: see Information and Privacy Commissioner/Ontario, *Annual Report 2001* at 20-24, available online: www.ipc.on.ca/docs/ar-01e.pdf (date accessed 17 April 2003).

RD/AD

In order to address some of the problems with the formal statutory access systems, and to more fully realize the underlying values and goals of FOI, the IPC has been a strong advocate of the routine disclosure and active dissemination of government information (referred to by the short form RD/AD).[18]

Routine disclosure (RD) refers to the practice of governments routinely releasing certain types of administrative and operational records in response to informal requests. Public bodies that have adopted a process of routine disclosure will normally set aside the records that are commonly the subject of access requests, and then make them available informally. Because commonly requested records have already been identified, it is not necessary to go through the time-consuming search process every time a new request for information is made. The related concept of Active Dissemination (AD) refers to the periodic release of government information in the absence of any formal or even informal request.

In several instances, public bodies have successfully implemented RD/AD initiatives across Ontario as a means of augmenting the statutory FOI process.[19] As the Internet becomes more pervasive, it is clear that the principles of RD/AD should be applied to the electronic world. Governments need to now turn their focus to electronic RD/AD or e-RD/AD.

To date, some public bodies in Ontario have taken tentative steps to utilize e-RD/AD principles. Ontario's Ministry of the Environment, for example, now makes information about the quality of drinking water available on its website.[20]

However, existing initiatives only scratch the surface of what a robust government-wide e-RD/AD regime might look like. Currently, relatively few government records are available online. Most information about government operations and decision-making is still only available through formal FOI requests or, to some extent, through paper-based RD/AD programs. However, progress that is being made in both the United States and in Canada suggests that some form of e-RD/AD is an emerging trend.

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[18] Information and Privacy Commissioner/Ontario, *Annual Report 2000*, at 9-11, available online: www.ipc.on.ca/docs/ar-00e.pdf (date accessed: 17 April 2003).

[19] Information and Privacy Commissioner/Ontario & Freedom of Information and Protection of Privacy Office, Public Access Services Branch of Management Board Secretariat, *Enhancing Access to Information: RD/AD Success Stories*, available online: www.ipc.on.ca/docs/success.pdf (date accessed: 17 April 2003).

[20] The Ministry's Drinking Water Information System website is available online: www.ene.gov.on.ca/environet/dwis/index.htm (date accessed 17 April 2003).

United States: Emerging Trends

The United States is emerging as a world leader in making government information available online. In the mid-90s, two laws were passed in Congress that mandate proactive dissemination of government information: *The Paperwork Reduction Act*, (1995)[21] and the *Electronic Freedom of Information Act Amendments*, (1996).[22]

The *Paperwork Reduction Act* sets out a basic framework for improving the information technology practices of the U.S. government. Key provisions in the legislation include:

- the requirement that effective and efficient information resource management practices be implemented across the government;
- a reduction in the paperwork burden imposed on the public by the government; and
- a provision that the greatest possible public benefit should come from the collection, use, and dissemination of information collected from the public.

The *Electronic Freedom of Information Act Amendments (E-FOIA)* goes further, requiring all federal government agencies to make available electronically:

> [C]opies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records....[23]

Simply put, this provision requires all U.S. federal government agencies to make generally available, in an electronic format, all records that have been the subject of an FOI request that the agency determines are likely to be requested again in the future.

Following the passage of *E-FOIA*, public access to records is now granted through what have been called "electronic reading rooms" — virtual public spaces on government websites where information that has been the subject of prior FOI requests in the past is made available to anyone that is able to access the website of a particular government agency.[24]

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[21] Public Law 104-3, 104th Congress.

[22] *The Freedom of Information Act* 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048 [hereinafter *E-FOI*].

[23] Ibid.

[24] These "Electronic Reading Rooms" have been developed to augment the traditional physical "reading room" that each government agency is required to have that allows easy access physical access to routine government information including: final opinions or orders of the agency, the documents that would otherwise form the "secret law" of the agency, and all other records, where their disclosure would be inefficient by way of an FOI request: see *Freedom of Information Act*, 5 U.S.C. § 552(a)(2).

For most government bodies, the public can access the relevant electronic reading room through a direct link from the agency's home page. For instance, the U.S. Department of State's home page[25] has a menu appearing at the top of the screen giving the user several options. Clicking on the "FOIA" choice brings the user to a screen that provides access to the department's electronic reading room.

Once inside the virtual electronic reading room, the user is able to conduct a text key-word search of all previously disclosed records that have been released to the public that appear online. (There are upwards of 15,000 records on the Department of State's websites alone.) For instance, entering the word "Canada" into the search engine of that department's electronic reading room produced 480 "hits" (i.e., documents available electronically that contain the word Canada).[26]

By creating electronic reading rooms, government departments provide the public with easy access to large volumes of government information without the need to submit formal FOI requests. As good as this is, it still falls short of complete transparency. The public is limited to viewing only information that has been the subject of previous FOI requests. Users are not able, for instance, to gain access to the government's archival holdings through the use of electronic reading rooms.

More recently, the National Archives & Records Administration (NARA) of the U.S. government released a new document archival system. Called the Access to Archival Databases System (AAD), this system provides researchers with online access to more than 50 million historical electronic records organized in over 350 databases, all of which is accessible through the NARA website.[27] Users are able to search for specific persons, geographic areas, or dates, and are able to retrieve, download, or print out the record in question.

Canadian Steps

As noted earlier, Canada has positioned itself as a world leader in the area of electronic service delivery. Indeed, the federal government's Web portal gives users access to a great deal of information about services offered by the government.

Recently, there have been calls from various segments of the population asking governments to become more proactive in making information available. In May 2002, the federal Access to

[25] Available online: www.state.gov/ (date accessed 17 April 2003).

[26] Among the 'hits' pertaining to Canada were: internal memos discussing the prospects of Quebec separation; a telegraph from 1991 expressing then Prime Minister Mulroney's position on trade sanctions with Canada; and a 1995 note explaining that that Canada is happy to have entered into an agreement concerning the transboundary movement of hazardous waste.

[27] Available on: www.archives.gov/aad/ (date accessed 17 April 2003).

Information Review Task Force released its report: *Access to Information: Making it Work for Canadians*.[28] The report was the product of 18 months of deliberations, during which the task force solicited and received submissions from a wide range of affected groups across the country.

One of the main findings of the task force was that the federal government should attempt to take steps to bring about a culture of open access to government information. Among its recommendations were:

- all the ways that information can be provided to the public should be considered during the design and implementation stage of any new project;
- that the Government of Canada website provide an explanation of all the ways in which government information may be accessed;
- that government institutions systematically identify information that is of interest to the public, and engage in the regular publication of this information either through the Internet, or by other means; and
- that the government regularly release information without recourse to the applicable FOI statutory regime.[29]

Other Canadian jurisdictions have come to the same conclusions. In Quebec, for example, the five-year Report of the Commission d'accès à l'information made several recommendations for improving that province's statutory FOI regime.[30] Among them was the recommendation that all public bodies be required, by statute, to produce a publication plan detailing how information will be made available, as well of a general index of documents. A press release summarized the Commission's position as follows:

> ... the list of documents that must be published upon their creation. These documents should be accessible automatically, without any need to submit a request for access. ... [T]he Commission invites public bodies to rely on information technology, which now allows quick and simple access to the information they hold.[31]

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[28] Government of Canada, *Access to Information: Making it Work for Canadians Report of the Access to Information Review Task Force*, June 2002 (Chair: A. Delegrave).

[29] For these and other recommendations, see Chapter 8 of the report, "Meeting the Information Needs of Canadians Outside of the Access to Information Act," ibid.

[30] See Summary of the *Report on the implementation of the* Act respecting access to documents held by public bodies and the protection of personal information *and the* Act respecting the protection of personal information in the private sector: *Reforming Access to Information: Choosing Transparency*, an abridged version of the report is available in English online: www.cai.gouv.qc.ca/en/resume_en.pdf (date accessed 17 April 2003).

[31] Press Release, Reforming Access to Information: Choosing Transparency, available online: www.cai.gouv.qc.ca/eng/cai_en/cai_loi_opinion_en.htm (date accessed: 17 April 2003).

It is clear that ICTs have the technological capability to transmit large amounts of data, and the time has come for governments to shift their focus from traditional FOI mechanisms as the primary means of information dissemination. The concepts of RD/AD and e-RD/AD should receive serious and comprehensive attention. If governments were to fully embrace the concept of e-RD/AD — by creating an online index of records, and putting more of its record holdings online — it would reduce the need for formal FOI requests. Instead, individuals could simply make an informal request by telephone or electronic mail to the appropriate ministry or government agency. Government staff would then be able to direct the individual to the appropriate location on the organization's website in order to permit the citizen to obtain access.

If governments at large adopted this new model of information dissemination, the formal FOI process could then be limited to those cases where contentious issues arise with regard to the applicability of exemptions, or cases where the requested records were particularly obscure or complex.

Unfortunately, governments in Canada have not, to date, embraced the potential of incorporating e-RD/AD concepts into e-government initiatives. And no governments have undertaken to amend the legislative schemes in ways already adopted in the U.S. to encourage information dissemination. This failure to act reinforces the public perception that governments are overly secretive and closed, and points to a failure in their democratic duty to allow for effective public scrutiny. While a statutory right to access information is critically important, it is only one component of a comprehensive and an effective information dissemination scheme, and governments in Canada must step up to the plate and look to the Internet as a tool for prompt, inexpensive and easy access to record holdings.

The remainder of this paper offers two practical ways to meet this challenge.

II. Electronic Records Management

The failure of government to adhere to statutory timeframes in processing FOI requests, or the failure to locate certain records, is due, at least in part, to a failure in records management practices. "Records management" can be described as the practice of storing, organizing, retaining, and disposing of information and records in the custody of government. Clearly, the implementation of proper records management practices should be viewed as a prerequisite to the effective and timely dissemination of government-held information.

The adverse impact of poor records management practices on the right of individuals to enjoy barrier-free access to government-held information has been highlighted by access to information experts. At the federal level, the Treasury Board Secretariat has a *Policy on the Management of Government Information Holdings*,[32] which mandates that all institutions of the federal government manage their records in ways that support effective decision-making, and that institutions provide for the widest possible use of that information. Although the federal policy has been in place since the 1980s, critics of the government's records management practices note that the federal government has failed to live up to its goals, thereby compromising the right of citizens to enjoy barrier-free access to information. John Reid, the Information Commissioner of Canada, has stated:

> Information management in the federal government is in such a sorry state that the term has almost become an oxymoron. There is a record-keeping crisis and it threatens the viability of the right of access.[33]

The Commissioner maintains that the federal government has not taken the steps necessary to ensure that the federal policy on records management is being followed or updated to keep pace with the growing reality of electronic record-keeping.

Generally, records management practices are governed by two statutory regimes that exist across the country. These are: archives laws, (dealing with historical records) and FOI laws (dealing with current records). In Ontario, the *Archives Act*[34] states:

- All government records must be retained, and may not be destroyed without the authorization of the Provincial Archivist;
- All records designated by the Provincial Archivist for permanent preservation must be transferred to the archives when no longer needed by ministries.[35]

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[32] The Policy on the Management of government Information is available online: www.tbs-sct.gc.ca/pubs_pol/ciopubs/tb_gih/mgih-grdg_e.asp (date accessed: 17 April 2003) [hereinafter Federal Policy].

[33] Information Commissioner of Canada, *Annual Report Information Commissioner 1999-2000* at 20 available online: www.infocom.gc.ca/reports/pdf/oic99_00E.pdf (date accessed: 17 April 2003).

[34] *Archives Act*, R.S.O. 1990, c. A.27.

[35] Ibid., s. 3.

Ontario's Management Board Secretariat (MBS) further clarifies appropriate records management practices in the province through its *Management of Recorded Information Directive*,[36] which requires Ontario ministries to develop "records retention schedules" that specify how long a record will be kept, and whether it will eventually be destroyed or sent to the Archives.

Although there are many rationales underlying the existence of retention schedules, one important one is to provide for the workability of statutory FOI schemes. In Ontario, FOI rules are governed by the *FIPPA*, which states in its purpose statement in section 1 that:

> The purposes of this *Act* are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public;
>
> (ii) necessary exemptions from the right of access should be limited and specific; and
>
> (iii) decisions on the disclosure of government information should be reviewed independently of government....

In order to effectively carry out the purposes of FOI laws in an effective and comprehensive manner, the information that is created and maintained by government needs to be stored in ways that allow members of the public to exercise their statutory right to access easily and cost effectively.

The Need to Improve Records Management Practices

In recent years, the discipline of records management has been in flux. Largely, changes to the very nature of government and the role it plays in the lives of citizens has forced a shift in thinking about the way in which information is best managed. Perhaps the most relevant change that has taken place in Ontario (as well as in other jurisdictions across Canada) has been a reduction in the number of employees, including records management staff.

Although governments still employ records management professionals, in recent years their numbers have dwindled and their role has diminished. Many records management responsibilities previously performed by specialists are now delegated to generalists in the civil service. In many instances, these changes have resulted in a lack of institutional cohesion and a rise in the inefficient management of records.

[36] Information Technology Policy Branch, Services Division, *Management of Recorded Information Directive* (June 2002).

A second reason why records management practices need to be improved relates to the gradual movement, over the last two decades, away from paper in favour of electronic records. Many government records created today exist only as stored files on a computer. Because this change has occurred gradually, over a number of years, it has lacked uniformity. The challenge faced by government in dealing with the transfer from paper to electronic records has been described by Ontario's Provincial Activist as follows:

> ... [A]d hoc information management practices prevail within most government ministries and agencies. Few information management practices and procedures are applied consistently and effectively across [the government]. Records and data are managed as resources "belonging" to individuals and program units, not as shared, *corporate* resources (often within individual programs).[37]

As a result of this gradual shift to electronic records, governments have failed to adopt central, comprehensive file classification systems.

A third reason why records management practices are in need of reform relates to the requirements of information dissemination under statutory FOI regimes. As discussed in Part I, above, institutions in Ontario that are subject to *FIPPA* must respond to an FOI request with 30 days. Often, institutions experience difficulty in complying with these timeframes. A significant part of this problem is due to delays in determining whether responsive records exist, and if they do, where they are located.

Institutions have only recently have come to accept the need to refine records management practices. As a result, many of them are now considering the adoption of new records management systems and procedures.

The Value of Electronic Records and Document Management Systems

We have taken the position that all government organizations in the province should adopt Electronic Records and Document Management Systems (ERDMS).[38] Briefly stated, an ERDMS is a tool that enables an organization to efficiently manage all records and documents that are created and maintained in an electronic format.

An ERDMS is a software solution that is installed on the computer terminal of any government employee who is involved in the creation of new records. Whenever a new document is created, it is automatically saved in a central repository. The ERDMS allows the creator of the record to appropriately categorize the document so that it can be easily accessible, when needed. The

[37] Archives of Ontario, *Records/Document Management Systems (R/DMS) Standard—Technical Specifications*, at 12.

[38] Information and Privacy Commissioner/Ontario, *Annual Report 2002* (forthcoming, June 2003).

creator also classifies the record as either confidential, made accessible to some users, or made generally available to the public at large.

The value that an ERDMS adds to existing statutory FOI regimes is clear. Good records management practices are an essential element to an institution's compliance with FOI rules. The right of the public to access government-held information can only be fulfilled where public servants are properly documenting government programs and activities in a well-organized and efficient manner. Where fully functional ERDMSs are implemented, the process of passing along information to the public, either through a formal FOI request or by other means becomes relatively straightforward. Because ERDMSs enable users to save all records in a central repository, records can be searched and retrieved with ease.

In addition, ERDMS technology enables institutions to go a step further than the strict requirements of FOI laws, and become proactive in disseminating information to the public. Thus, ERDMSs may represent a potential cost effective mechanism for bringing about the goals of electronic dissemination of information, and may be used to complement other e-RD/AD initiatives.

Attributes of an ERDMS

Governments, to some extent, have started to take action in the area of records management, and have begun to blueprint what a fully-functional ERDMS should look like. In Ontario, the Provincial Archivist has released a draft Business Case[39] outlining the required elements for "Records/Document Management Systems." (Although the terminology is slightly different than that used in this paper, what is being contemplated is essentially equivalent to an ERDMS.)

The business case identifies the attributes that should be mandatory in all ERDMSs adopted by government. They include:

- Consolidation of all records having a related subject-area in a manner that allows for comprehensive and efficient access across organizations. Systems should also enable all related file classifications to be saved in the applicable folders;
- Records should be automatically associated with system-generated metadata (*e.g.*, records should be designated according to: subject, date, author, format, location, and security classification);
- Fast, complete and secure cross-organizational retrieval and use of information through search engines;

[39] Management Board Secretariat, Archives of Ontario and Corporate Architecture Branch, *Centre of Excellence Records/Document Management System: Business Case* (16 April 2002) [hereinafter Business Case].

- Enforcement of detailed access permissions giving users the ability to view, edit or dispose of records as well as associated meta-data;
- Promotion of prompt, thorough and efficient transfers of records to the archives as required by retention schedules;
- Automatic purging of records when retention requirements are met;
- Maintenance of complete audit trails of who has created a given record, when it has been accessed, when it has been modified, when new versions have been created, and when any records have been deleted.[40]

Under the business case, ERDMSs introduced into the operations of government institutions must contain all of the attributes listed above. They are described in greater depth in the Archivist of Ontario's publication, *Records/Document Management Systems (R/DMS) Standard — Technical Specifications*.[41]

Although the Business Case and the technical specifications are both published by the Provincial Archivist, and relate mainly to the business of the archives, they have been designed to be compatible with FOI laws and principles. As such, the adoption of the ideas put forward in the business case would provide clear benefits to the operation of FOI laws.

Ideally, successful adoption and implementation of ERDMSs will alleviate pressures experienced by Freedom of Information Co-ordinators (FOI Co-ordinators) working in government institutions. Having one central, searchable repository of records would mean that FOI Co-ordinators would have one source to turn to when attempting to locate records. Fully functional ERDMSs would also reduce the difficulties of meeting statutory time standards for locating and distributing records pursuant to FOI requests. Because the system would quickly generate meta-data, both the public and FOI Co-ordinators would be able to quickly know the scope of record holdings available for searches. As well, the presence of an index of records would enable members of the public to more easily satisfy themselves that particular records do or do not exist.

The presence of a Business Case dealing with records management demonstrates that the Ontario government is moving in the right direction. However, to date, few provincial or municipal institutions in Ontario have implemented full-fledged ERDMSs that meet both the records and document management requirements as set out in the business case. That being said, some institutions have put interim solutions in place that demonstrate the potential of these systems to be used as a tool for disseminating information to the public.

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[40] See ibid. at 13-14.

[41] Archives of Ontario, *Records/Document Management Systems (R/DMS) Standard—Technical Specifications* (Version 2.0, 4 March 2003).

For instance, the Ministry of Natural Resources (MNR) is currently designing and implementing a technology that combines an Online Document Management System (ODMS) and an Online Web Publishing System (OWPS).[42] Although the technology is not a fully functional ERDMS (lacking basic capabilities for managing retention and disposal of records), it has many important features from an FOI perspective.

Under the ODMS, any users involved in the creation of corporate records, including briefing notes, letters, and presentations, are required to save documents in a central ministry-wide ODMS repository. This repository is searchable and allows users to find any relevant document through the use of key words.

The second component of the MNR system — the Web-based OWPS — allows users to view records that have been created and that are available for viewing on the ODMS. Any records that have been marked "visible" are made available for viewing on specified websites. Depending on how a record is marked, viewing may be restricted to only certain users. Access rights can be made as broad or as narrow as required, depending on the nature of the record. For instance, access may be limited to certain government staff, to the government as a whole through the corporate intranet, or conceivably to the public at large through the Internet. At all times, ministry staff are responsible for monitoring content to ensure that no personal or otherwise sensitive information is made accessible to a wider audience than is appropriate.

When fully operational, it is clear that the combination of the ODMS and the OWPS has the potential to not only effectively disseminate information to the public, but also to improve the function of the ministry's FOI office. By making records available on websites, MNR will have developed a system with the potential to allow the public to access information directly from the comfort of their home computer, without the need to rely on formal FOI processes. This will reduce the numbers of FOI requests and enable the institution to more easily meet its statutory time standards.

Once an ERDMS is implemented by a government organization, the next logical step — making the information available generally to the public — becomes relatively straightforward. In the next section of this paper, we suggest the adoption, by government, of Access Design Principles — principles that will require governments to consider the retrieval of, and direct access to information in the design of any new information management technologies, including ERDMSs.

[42] It bears notice that this system would not be classified as a full-scale ERDMS (or R/DMS as they are named in the MBS literature) because it does not possess the capacity to manage and dispose of records in accordance with the Business Case.

III. Access Design Principles

Generally, there are two main barriers that prevent the effective dissemination of government information to the public. The first relates to cost — often complex searches may involve several employees working in different departments giving rise to onerous labour costs — costs that are eventually passed along to individual access requestors.[43] The second barrier involves the length of time it can take to process access requests. Processing delays can compromise the requester's ability to effectively utilize the information accessed through an FOI request. However, there are solutions that can address both of these barriers. If technological systems and government databases housing information are constructed in a manner that integrates the principle of accessibly at the initial design stage, barriers to access can be reduced.

This goal of barrier-free access can be advanced through the design and implementation of Access Design Principles (ADP). In short, ADPs are a set of principles to be considered when designing any new system that will prevent it from acting as a barrier to access. Instead, the new technology would be viewed as an opportunity to enhance access to government-held information. To be truly effective, compliance with ADP should become a mandatory requirement that would have to be considered prior to the adoption of any new government technology.

In considering the proper framework for an ADP, it is important to keep in mind the diverse potential formats that government records may take. For instance, records may be:

- traditional paper-based records stored in a filing cabinet residing in a government institution;
- records that were once paper-based, but have been subsequently scanned into an electronic readable format such as Portable Document Format (PDF);
- records of correspondence, including letters, electronic mail, and voice mail;[44] and
- information that exists only in digital form on a government database.

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[43] Ontario's *FIPPA*, supra note 15, s. 57 states:

> (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[44] Whether voice mail messages are properly construed as a record is the subject of some debate. The Connecticut Freedom of Information Commission has released Draft Declaratory Ruling #94 on E-mail and Voice Mail. If adopted, this Ruling would classify the voice and electronic mail in the custody of public bodies in Connecticut as records. The draft declaration ruling is available online: www.state.ct.us/foi/ (date accessed 17 April 2003).

Regardless of format, all information in recorded form that is in the custody of a government body is generally considered to be a "record" and therefore subject to potential access through FOI laws. However, in cases where a particular request involves digitized or hard-to-find information, the barriers to access (both in terms of costs and the time involved with searching) can be significant.

For example, if someone submits a formal access request to the Ontario Ministry of Environment for the test results of all water wells in the province, he or she could expect to face a considerable delay and substantial costs. Those test results may be hard to find, or may be physically located in different areas of the province, thereby resulting in a substantial delay due to the time it may take for officials to actually locate the relevant records. Properly designed and implemented, technology can be a solution to these problems.

The overarching principle behind the development of ADPs is that requirements pertaining to access to information should be a mandatory element in the formulation of any new government technology or initiative, and that these should be incorporated from the design stages. Ideally, a prerequisite to funding any initiative should be an assessment of whether a given proposal accords with the ADP.

Ontario has developed a set of principles similar to ADPs in the context of the protection of personal privacy. These Privacy Design Principles must now be considered when designing and implementing new technologies in the province. Ministries considering the adoption of new systems or programs that may involve privacy implications are required to complete a Privacy Impact Assessment (PIA)[45] prior to receiving the approval required for an initiative.

If adopted by governments, ADPs would require public bodies to build access and information dissemination capabilities into all new technologies. At a minimum, this would ensure quick responses to FOI requests at a minimal cost. Eventually, this technology would enable users to directly search the records holdings of a particular agency or government department. For instance, to return to the example above, under an ADP regime, an individual requesting information from the Ministry of the Environment pertaining to the testing of the water quality in wells might be able to submit the following query directly to the Ministry's database:

> The location of all wells in the Province of Ontario that have been tested for water quality within the last year.

After submitting the query, the end user would receive an automated report (similar to the results page of a search engine on the Internet) providing a list of all available relevant information. Conceivably, the data could contain electronic "links" to paper records that have been scanned into an electronic form, providing information on the testing of specific wells, or it may link

[45] For an example of a PIA, see the PIA Guidelines that have been produced on the website of Ontario's Management Board Secretariat, online: www.gov.on.ca/MBS/english/fip/pia/ (date accessed 17 April 2003).

directly to data providing a list of all wells that have been the subject of testing in the past year. Because access to information has been integrated into the design stage, the process of making that information available to the public becomes relatively straightforward, timely and inexpensive.

The ADP

Ultimately, ADPs should be viewed as a package of criteria that would establish the parameters of any new system or technology, and would include:

Provisions for accountability

The ADP should outline roles and responsibilities for program and organization heads. The affected institution should be required to explicitly set out *who* will be responsible for various aspects of the system. A hierarchy of reporting relationships should also be established and set out. Criteria should be developed addressing performance standards and accountability mechanisms.

Categorization of information

As an initial stage, data holdings should be examined and broken into the following three main categories as follows:

- data which is accessible by the public;
- data which may be accessible to the public pursuant to approval by the appropriate government staff member (including information subject to discretionary exemptions); and
- data that is confidential or otherwise exempt from disclosure.

As well, the ADP should require the setting of targets specifying the volume of information placed into each of these three categories. Ideally, in the spirit of full-scale information dissemination, decision-makers should strive to place as much information as possible in categories (a) and (b), which allow for access to the public. A corollary of this principle is that information in both categories (a) and (b) should ideally be housed and structured in a way that allows direct citizen access. For information in category (b), there should be the possibility of direct citizen access, with the caveat that there be an access control administered by appropriate government staff.

The ADP should require the design of a fluid system — one in which information may be easily transferred from one category to another. In this way, where circumstances dictate, information may be re-categorized as needed, allowing for the greatest potential for information dissemination by the public.

Protection of personal information

While the universal access to information promoted through the adoption of an ADP offers unparalleled opportunities in terms of promoting transparency, there are accompanying concerns regarding the confidentiality and the security of the personal information of individuals contained within many systems. As such, it is crucial that any new systems are subject to a thorough PIA, and are then designed in a way that maintains the integrity of the personally identifiable information about individuals held by government. In no cases should the personal information of individuals be made generally accessible.

Keeping in mind the second ADP criteria, above, the personal information of individuals may be protected by ensuring that personally identifiable information is categorized in data sets that are kept separate from the information that is made generally available.

Records management

The ADP should require the project team to conduct an assessment of the records management practices of the particular ministry or program area before the new technology is introduced. If current records management practices are deemed inadequate, steps should be taken to improve those practices. This process may include the potential adoption of ERDMSs, (as discussed in Part II, above) for any new records that are being created.

The database that houses the information should be developed in a way that facilitates the reduction or elimination of the costs of granting access to information pursuant to either formal or informal access requests.

Communications plan

An important step in any public access scheme involves the fostering of awareness of the potential avenues of information dissemination available to members of the public. An integral element in the ADP, therefore, is the development of a communications plan that addresses how the public will be advised of its ability to access government information through the use of the Internet. The communications plan should be composed of both an Internet-based strategy, and a strategy employing elements of the mainstream media. The ADP should also recommend a series of consultations with appropriate stakeholders.

Reporting mechanisms

In information technology terminology, the term "reporting mechanism" refers to the software installed on a database system that produces the output that is eventually viewed by the end-user. Because the goal of an ADP is to allow access to the broadest range of individuals, the reporting mechanism should be flexible in design, and should allow for use by a number of potentially disparate types of end-users.

The selection of an appropriate reporting mechanism will be furthered if, at the design stage, the ADPs require an analysis of past FOI requests as a predictor of the type of information that might be requested by the public in the future. Where stakeholder consultations take place at the design stage, individuals should be given the opportunity to comment on the eventual reporting mechanism.

Reporting mechanisms should be designed with the express purpose of future use by the public to directly access data. In terms of functionality, these tools should be easy to use, and should be able to link to a central government website.

Provide for integration with central government Web-portal

The data that is held in databases should be catalogued in a way that facilities easy linkages to a central government Web portal, permitting direct citizen access to data that is not confidential, or otherwise exempt from disclosure. Project teams should strive to link potentially diverse data sets in a manner that allows for access through the central government portal.

Through adopting these ADPs, governments would clearly send the message that they are getting serious about information dissemination.

Conclusion

To date, governments in Canada have not tapped the potential for proactively disseminating information to the public, particularly through electronic means. Generally, information that is made available on government websites relates primarily to the provision of government services. That's the easy part. The more difficult challenge is for governments to move beyond the culture of secrecy and find ways to actively disseminate information to the public. FOI laws provide the bedrock to transparent and accountable public administration, but must be enhanced by RD/AD and e-RD/AD programs in order to be truly effective.

And the time is ripe. There is a growing recognition of the need to make government more accountable. Coupled with the growth in e-government, this has given rise to new opportunities to promote good governance. Miriam McTiernan, the Archivist of Ontario has stated:

> E-government is not simply about using new technologies to provide information and services to citizens, but also about changing the relationships and expectations between citizen and the state. Just as the Internet is changing traditional economic power structures, so too will e-government empower citizens and intensify their expectations of government responsiveness, transparency and accountability. Recorded information management is ultimately concerned with supporting these objectives by ensuring the integrity and availability of government information.[46]

In light of these opportunities, governments across the country must adopt new policies and procedures, and reform existing legislation in order to make the active electronic dissemination of government information an imperative.

These changes can take on a number of forms. FOI laws could be amended to require institutions to make available online all records that have been the subject of an FOI request in the past, or all records that are deemed likely to become the subject of an access request in the future. This type of legislative amendment would bring Canadian jurisdictions in line with what is occurring in the United States.

Even without legislative changes, governments can still take other steps to improve practices with respect to information dissemination. Governments can decide, as a matter of policy, to proactively evaluate their record holdings in order to determine ways in which information could be made more widely available. This would involve an assessment of current records management practices and a consideration of how these practices may be improved, with particular focus on Electronic Records and Document Management Systems.

[46] M. McTiernan, address to the Access and Privacy Workshop (Toronto: 13 September 2001).

Governments can also institute a mechanism, such as Access Design Principles that would mandate that considerations pertaining to access be incorporated into the design of any new government system or technology. By requiring all program areas to comply with these principles, citizens would gain direct and easy access to government information, at low cost to both the end user and the government institution.

It all comes down in the final analysis to commitment. Where there is a will, there is definitely a way; many ways, in fact. If governments are truly committed to enhanced public participation in the democratic process through the use of technology — e-democracy — they must first grapple with ways to effectively utilize technology as a tool to improve and facilitate information dissemination, and more of it, or e-democracy, and e-governance, will not reach its full potential.

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